

**UTAH JUDICIAL COUNCIL  
STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS  
MEETING AGENDA**

Hybrid Meeting: Matherson Courthouse Judicial Council Room & Via Webex  
March 5<sup>th</sup>, 2025 – 12:00 p.m. to 1:30 p.m.

12:00	Welcome and Approval of Minutes		Tab 1	Judge Welch
	Final Review of CR1002: Actual Physical Control		Tab 2	Judge Welch
	Proposed CR1016: Drinking an Alcoholic Beverage While Operating a Motor Vehicle		Tab 3	Nic Mills
	Proposed CR1017: Open Container in a Motor Vehicle		Tab 4	Nic Mills
	Proposed CR1017A: Definition of a Passenger Compartment		Tab 5	Nic Mills
	Proposed CR1013: Alcohol Restricted Driver		Tab 6	Breanne Miller
	Proposed CR1012: Ignition Interlock Driver Violation		Tab 7	Judge Bates
1:30	Adjourn			

**COMMITTEE WEB PAGE:** <https://www.utcourts.gov/utc/muji-criminal/>

**UPCOMING MEETING SCHEDULE:**

Meetings are held via Webex on the first Wednesday of each month from 12:00 noon to 1:30 p.m. (unless otherwise specifically noted):

May 7<sup>th</sup>, 2025  
June 4<sup>th</sup>, 2025  
August 6<sup>th</sup>, 2025  
September 3<sup>rd</sup>, 2025

October 1<sup>st</sup>, 2025  
November 5<sup>th</sup>, 2025  
December 3<sup>rd</sup>, 2025

Category 1 = Instruction exists and no amendments necessary

Category 2 = Instruction exists and amendments necessary

Category 3 = Instruction does exist, but instruction awaiting publication

Category 4 = Instruction does not exist

### **Proposed Order of DUI Instructions CR1000 Series:**

CR1000 – DUI Instructions (Category 1)

CR1001 – Preamble to Driving Under the Influence Instructions (Category 1)

CR1002 – Actual Physical Control (J. Jones) (Category 3)

CR1003 – Simple Driving Under the Influence Instruction (Category 2) (Nic Mills)

CR1004 – Enhanced Driving Under the Influence Instruction (Category 2) (Nic Mills)

CR1005 – Driving Under the Influence of Alcohol, Drugs, or Combination/Extreme DUI (Category 2) (Nic Mills)

CR1006 – Automobile Homicide (McKay Lewis) (Category 1)

CR1007 – Reserved

CR1008 – Driving with a Measurable Controlled Substance (Category 1)

CR1009 – Negligently Operating a Vehicle Resulting in Injury (McKay Lewis) (Category 1)

CR1010 – Refusing a Chemical Test or Blood Draw (McKay Lewis) (Category 4)

CR1011 – Refusal as Evidence of Consciousness of Guilt (McKay Lewis) (Category 4)

CR1012 – Ignition Interlock (J. Bates) (Category 4)

CR1013 – Alcohol Restricted Driver (Breanne Miller) (Category 4)

CR1014 – Driving With Alcohol in Your System as an Alcohol Restricted Driver (Janet Lawrence) (Category 4)

CR1015 – Driving a Motor Vehicle Under the Influence of Alcohol or Drugs When the Driving Privilege Has Been Suspended, Disqualified, or Revoked (Janet Lawrence) (Category 4)

CR1016 – Drinking an Alcohol Beverage While Operating a Motor Vehicle (Nic Mills) (Category 4)

CR1017 – Open Container in a Motor Vehicle (Nic Mills) (Category 4)

CR1017A – Definition of Passenger Compartment (Nic Mills) (Category 4)

### **Proposed DUI Special Verdict Forms**

SVF1001 – Driving Under the Influence [Will Revise] (Nic Mills)

Placeholders:

**CR??? 41-6a-504. Defense not available for driving under the influence violation.**

The fact that a person charged with violating Section [41-6a-502](#) is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating Section [41-6a-502](#). (Nic Mills)

**CR??? 41-6a-526. Drinking alcoholic beverage and open containers in motor vehicle prohibited -- Definitions -- Exceptions.** (Nic Mills)

**CR??? 41-6a-518.1. Tampering with an ignition interlock system.** (J. Bates)

Other Assignments:

CR??? Burglary (McKay Lewis) (Category 4)

CR??? Aggravated Burglary (McKay Lewis) (Category 4)

CR1320: Aggravated Assault (Breanne Miller) (Category 2)

# **TAB 1**

**Meeting Minutes – March 5<sup>th</sup>, 2025**

**UTAH JUDICIAL COUNCIL  
STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS  
MEETING MINUTES**

Via Webex  
March 5, 2025 – 12:00 p.m. to 1:30 p.m.

**DRAFT**

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. Teresa Welch	District Court Judge [Chair]	•		<b>STAFF:</b> Bryson King
Hon. Christopher Bown	Justice Court Judge	•		
Dr. Jay Jordan	Linguist/Communications Professor	•		
Hon. Linda Jones	Emeritus District Court Judge		•	
Hon. Matthew Bates	District Court Judge	•		
[VACANT]	Defense Attorney	N/A	N/A	
Janet Lawrence	Defense Attorney		•	
Jeffrey Mann	Prosecutor	•		
Breanne Miller	Prosecutor	•		
[VACANT]	Defense Attorney	N/A	N/A	
Freyja Johnson	Defense Attorney	•		
McKay Lewis	Prosecutor		•	
Nic Mills	Prosecutor	•		

**(1) WELCOME AND APPROVAL OF FEBRUARY 2025 MINUTES**

Judge Bown, as acting chair of the Committee, welcomed the Committee and reviewed the minutes from the last meeting. Judge Bates moved to approve the minutes, and Breanne Miller seconded the motion. Without opposition, the motion passed and the minutes were approved. Judge Welch joined the meeting and welcomed the newest member, Judge Bown, to the Committee.

**(2) AGENDA ITEM 2: CR1002**

The Committee then discussed public comment feedback regarding CR1002. All comments recommended that the Committee draft an instruction that provides what *does* constitute actual physical control rather than what doesn't. After some discussion, the Committee determined either to withdraw and remove the instruction or amend the instruction to provide guidance on what does constitute actual physical control. Some Committee members raised concerns about drawing too much attention to elements that do constitute actual physical control, rather than encouraging jurors to perform their fact-finding responsibilities. After some discussion, the Committee proposed listing factors from case law that may include actual physical control, with language that reads less determinative. The Committee also determined to put factors that would not constitute actual physical control in parenthesis for discretionary use. After some formatting and language modifications, the Committee voted to postpone approving CR1002 until its next meeting to do a final review.

**(3) ADJOURN**

The Committee adjourned around 1:30p.m. The Committee's next meeting will be April 2<sup>nd</sup>, 2025, from 12:00p.m. to 1:30p.m.

# **TAB 2**

## **Final Review of CR1002: Actual Physical Control**



## CR1002: Actual Physical Control

You must initially determine whether the defendant was either driving a vehicle or was in actual physical control of a vehicle. In determining whether the defendant was in actual physical control of a vehicle on the date in question you must look to the totality of circumstances. ~~Let me suggest-~~ Some factors to consider in determining whether a person is in actual physical control of a vehicle may include, but are not limited to:

- [Whether the defendant was asleep or awake when discovered;
- The position of the vehicle;
- Whether the engine was running;
- Whether the defendant was in the driver's seat of the vehicle;
- Whether the defendant was the sole occupant of the vehicle;
- Whether the defendant was in possession of the ignition key;
- Whether the defendant had the apparent ability to start and move the vehicle;
- How the vehicle got to where it was found;
- Whether the defendant drove the vehicle to its location;
- Any other factor you consider important in making this determination.]

~~In determining whether the defendant was in actual physical control of a vehicle on the date in question, you must look to the totality of circumstances, you may consider the foregoing factors and anything else you think is important.~~

~~[However, if you find that each of the following five circumstances exists, you must conclude that the defendant was not in actual physical control of a vehicle: However, actual physical control does not include a circumstance in which you find each of the following factors exist:~~

1. The defendant is asleep in the vehicle;
2. The defendant is not in the driver's seat
3. The engine of the vehicle is not running
4. The vehicle is lawfully parked; AND
5. Under the facts presented, it is evident that the defendant did not drive the vehicle to the location while under the influence of alcohol, a drug, or the combined influence of alcohol and any drug.

~~If you find that each of the foregoing five circumstances exist, you must conclude that the defendant was not in actual physical control of a vehicle.]~~

## References

- Utah Code Ann. § 41-6a-501(1)(a)
- Richfield City v. Walker, 790 P.2d 87 (Utah App. 1990)
- State v. Prawitt, 2011 UT App 261, 262 P.3d 1203

## Committee Note

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

# **TAB 3**

**Proposed CR1016: Drinking an Alcoholic  
Beverage While Operating a Motor Vehicle**

## **CR1016: Drinking an Alcoholic Beverage While Operating a Motor Vehicle**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Drinking an Alcoholic Beverage in a Motor Vehicle [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Drank an alcoholic beverage while:
  - a. Operating a [golf cart], [a motor vehicle], [a motor assisted scooter], [or a class 2 electric assisted bicycle]; or
  - b. They were a passenger in a motor vehicle on any [highway] [or waters of the state].

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### **References**

- Utah Code sect. 41-6a-526

### **Committee Notes**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing this instruction.

Please note that this offense has several exceptions as outlined in 41-6a-526(4) and (5). The offense does not apply to passengers in the living quarters of a motor home or camper; who have carried an alcoholic beverage onto a limousine or chartered bus (in compliance with Subsections 32B-4-415(4)(b) and (c)); or in a motorboat on the waters of the state. Further, the prohibition on keeping, carrying, possessing, transporting, or allowing another to do those acts does not apply to passengers traveling in any licensed taxicab or bus.

Practitioners may also find value in using additional instructions to define "Alcoholic Beverage," "Chartered Bus," "Limousine," "Passenger Compartment," or "Waters of the State" as appropriate.

# **TAB 4**

**Proposed CR1017: Open Container in a  
Motor Vehicle**

## **CR1017: Open Contained in a Motor Vehicle**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with having an Open Containers in a Motor Vehicle [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Kept, carried, possessed, or transported, [or allowed another to keep, carry, possess or transport];
3. In the passenger compartment of a [motor vehicle,] [on a golf cart,] [on a motor assisted scooter,] [or on a class 2 electric assisted bicycle];
4. On any [highway] [or waters of the state];
5. Any container whatsoever which contained any alcoholic beverage; and
6. That container had been opened, its seal broken, or the contents of the container partially consumed.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

## **References**

- Utah Code sect. 41-6a-526

## **Committee Notes**

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing this instruction.

Please note that this offense has several exceptions as outlined in 41-6a-526(4) and (5). The offense does not apply to passengers in the living quarters of a motor home or camper; who have carried an alcoholic beverage onto a limousine or chartered bus (in compliance with Subsections 32B-4-415(4)(b) and (c)); or in a motorboat on the waters of the state. Further, the prohibition on keeping, carrying, possessing, transporting, or allow another to do those acts does not apply to passengers traveling in any licensed taxicab or bus.

Practitioners may also find value in using additional instructions to define "Alcoholic Beverage," "Chartered Bus," "Limousine," "Passenger Compartment," or "Waters of the State" as appropriate.

# **TAB 5**

## **Proposed CR1017A: Definition of Passenger Compartment**

## **CR1017A: Definition of Passenger Compartment**

You are instructed that "Passenger Compartment" means:

- (i) the area of the vehicle normally occupied by the operator and passengers.
- (ii) This includes areas accessible to the operator and passengers while traveling, including a utility or glove compartment.
- (iii) But the term does not include a separate front or rear trunk compartment or other area of the vehicle not accessible to the operator or passengers while inside the vehicle.

## **References**

- Utah Code sect. 41-6a-526 (1)(d)

# **TAB 6**

**Proposed CR1013: Alcohol Restricted Driver**



## **CR1013 - Alcohol Restricted Driver**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Alcohol Restricted Driver [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME)
  - a. Operated a vehicle; or
  - b. Was in actual physical control of a vehicle; and
2. (DEFENDANT'S NAME)
  - a. Had any measurable or detectable amount of alcohol in [his][her] body.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### **References:**

- Utah Code Ann § 41-6a-530

### **Committee Notes:**

For the definition of "actual physical control" see CR 1002. Practitioners may also include instructions defining "vehicle" pursuant to Utah Code Ann § 41-6a-102(90) and "measurable or detectable amount" pursuant to Utah Code Ann § 41-6a-530(2).

### **Vehicle as defined in 41-6a-102(90)**

"Vehicle" means a device in, on, or by which a person or property is or may be transported or drawn on a highway, except a mobile carrier, as defined in Section [41-6a-1120](#), or a device used exclusively on stationary rails or tracks.

### **Measurable or detectable amount as defined in 41-6a-530(2)**

A "measurable or detectable amount" of alcohol in the person's body may be established by:

- a) A chemical test;
- b) Evidence other than a chemical test; or
- c) A combination of both.

# **TAB 7**

## **Proposed CR1012: Ignition Interlock Driver Violation**

## **CR1012 Interlock Restricted Driver Violation**

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with violating an ignition interlock restriction on (DATE). You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME)
  - a. On (Date)
  - b. Was an interlock restricted driver; and
2. (DEFENDANT'S NAME):
  - a. Operated or was in actual physical control of a vehicle without an ignition interlock system; [and]
  - b. [The affirmative defense of operating a vehicle in the scope of employment, as defined in Instruction \_\_\_\_, does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

## **References**

- Utah Code § 41-6a-518.2